

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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|-------------------------------------|---|---------------------------------|
| ----- | X | |
| TELE-GUÍA TALKING YELLOW | : | |
| PAGES, INC. | : | |
| | : | |
| Plaintiff / Counterclaim Defendant, | : | |
| | : | Civil Case No.: 07-civ-3948-DLC |
| v. | : | |
| | : | ECF CASE |
| CABLEVISION SYSTEMS | : | |
| CORPORATION, | : | TRIAL BY JURY DEMANDED |
| | : | |
| Defendant / Counterclaimant. | : | |
| ----- | X | |

**PLAINTIFF'S MOTION FOR LEAVE TO FILE
AN AMENDED COMPLAINT JOINING ADDITIONAL PARTY**

Pursuant to Fed. R. Civ. P. 15 (a) and the Pre-Trial Scheduling Order dated December 11, 2007, Plaintiff Tele-Guía Talking Yellow Pages, Inc. (“Tele-Guía”), hereby moves for leave to file an amended complaint adding an additional named defendant. A copy of the proposed Amended Complaint is attached herein as Exhibit 1.

FACTUAL BACKGROUND

This is an action for patent infringement brought by Tele-Guía against Cablevision Systems, Inc. (“Cablevision”). The infringing services are rendered by or on behalf of Cablevision, and are offered for use to Cablevision’s subscribers. As originally filed, Tele-Guía’s complaint named only Defendant Cablevision. By this motion, Tele-Guía seeks to amend the complaint to add defendant ABC Company (“ABC” or collectively “Defendants”) as the name of an independent contractor or other person or entity working for / on behalf of

Cablevision. Despite obviously having relevant information, Cablevision failed to identify the contractor in its Initial Disclosures dated November 30, 2007, and has additionally refused Plaintiff's request for the specific identity. Thus Tele-Guía has identified the contractor as "ABC Company" until such time as Cablevision provides the information.

ARGUMENT

I. STANDARD GRANTING LEAVE TO AMEND

Fed. R. Civ. P. 15(a) provides in part: "... a party may amend the party's pleading only by leave of court... and leave shall be freely given when justice so requires." "Subdivision (a) encourages the court to look favorably on requests to amend... This proposition has been reinforced by innumerable judicial pronouncements by the federal appellate and district courts alike." Wright, et al., *Federal Practice and Procedure*, § 1484 (1990). "Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded.... If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman v. Davis*, 371 U.S. 178, 182 (1962). The liberal granting of motions for leave to amend reflects the basic policy that pleadings enable a claim to be heard on its merits. When there is no evidence of bad faith, dilatory motive or delay, the district court should readily grant leave to amend.

II. TELE-GUÍA SHOULD BE GRANTED LEAVE TO AMEND

As explained above in the Factual Background, justice requires that Tele-Guía be permitted to pursue its claims against Defendant ABC. Naming the contractor as a defendant in this suit is the only way for Plaintiff to respond to Cablevision's recent statement that such entity

is essential to the case and further to ensure that Plaintiff obtains all the documents and information necessary to prove its claims. Cablevision is seeking to hide the contractor's identity, Plaintiff assumes, for tactical reasons. Accordingly, this liberal policy of the courts in favor of granting motions to amend pleadings applies here, and Tele-Guía's Motion should be granted. The instant litigation is in its early stages, and there would be no jeopardy or lost time to the court or the parties.

CONCLUSION

For the foregoing reasons, Tele-Guía respectfully requests that this Court grant its leave to file and serve the Amended Complaint attached hereto as Exhibit 1.

Dated: January 25, 2008

Respectfully submitted,

LACKENBACH SIEGEL LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the enclosed **PLAINTIFF'S MOTION FOR LEAVE TO FILE THE FIRST AMENDED COMPLAINT** was served on Counsel for Defendant on January 25, 2008, via U.S. 1st Class Mail and via electronic mail, addressed to Counsel for Defendant as follows:

Michael S. DeVincenzo, Esq.
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And via electronic case filing (ECF) which will transmit copies to all counsel of record.

Dated: Scarsdale, New York
January 25, 2008


Nicole Saraco

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